



UNITED STATES SENATE  
**REPUBLICAN  
POLICY COMMITTEE**

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March 28, 2001

## *What We Should Learn from Buckley v. Valeo* **How Important Is Non-Severability?**

What was the most important single provision of the Federal Election Campaign Act of 1971? Which section of that 30-year-old Act has most affected today's political climate? Was it the spending limits? The contribution limits? The presidential election system? Surprisingly, the answer might be . . . FECA's severability clause!

It was that severability clause, and the Supreme Court's severing of FECA's provisions, that most influenced today's campaign finance system, a system that nearly everyone denounces.

The 1971 Act was a *comprehensive legislative package*. Three Senate committees and two House committees considered the bill, as did both the Senate and the House, after an earlier bill had been vetoed. The Senate Commerce Committee said in its report, "S. 382 is a comprehensive bill [and] [b]ecause of its comprehensive nature the bill was simultaneously referred to the Committee on Commerce, Finance, and Rules and Administration." When President Nixon signed the bill, he said it was unlike the earlier bill that had "plugged only one hole in the sieve." The Supreme Court acknowledged that the Act was an "*intricate statutory scheme* adopted by Congress to regulate federal campaigns" with "restrictions on political contributions and expenditures that apply broadly to *all phases of* and *all participants in* the election process." *Buckley v. Valeo*, 424 U.S. 1, 12-13 (1976) (*per curiam*) (emphasis added).

Then, the High Court proceeded *to sever* various provisions of that "comprehensive" and "intricate statutory scheme." The Court **sustained** (1) limits on individual contributions, (2) disclosure and reporting requirements, and (3) public financing for presidential elections. *Id.* at 143.

The Court **struck down** (1) limits on campaign expenditures, (2) limits on independent expenditures, (3) limits on spending from a candidate's own funds, and (4) the manner of appointment for members of the Federal Elections Commission. *Id.* One reporting requirement had been struck down by the court of appeals. See, 424 U.S. at 10, n. 7.

FECA's "intricate statutory scheme" was sunk by *Buckley v. Valeo*. Is history about to repeat itself, or will Congress use a *non-severability clause* to insist that the Legislative Branch, and not the courts, will write the nation's campaign finance laws?

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